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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-

PRESBYTRY OF RIVERSIDE, THE PALM SPRINGS ADMINISTRATIVE COMMISSION FOR THE PRESBYTERY OF RIVERSIDE,

Petitioners,

vs.

COMMUNITY CHURCH OF PALM SPRINGS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION II

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION II

The Presbytery of Riverside and the Palm Springs Administrative Commission for the Presbytery of Riverside respectfully petition that a Writ for Certiorari issue to review the judgment and Opinion of the Court of

Appeal of the State of California, Fourth Appellate District, Division II, entered in this proceeding on February 27, 1979.

OPINIONS BELOW

The Opinion of the Court of Appeal of the State of California is reported at 89 Cal.App.3d 910, and appears in the Appendix hereto (Appendix A-2—A-30). The order of the Supreme Court of the State of California denying hearing (Appendix A-1) is not reported. The opinion of the Riverside County Superior Court, California, (Appendix A-31—A-36), is not reported.

JURISDICTION

The judgment of the Court of Appeal of the State of California, Fourth Appellate District, Division II, was entered on February 27, 1979. The order of the Supreme Court of the State of California denying petitioners' petition for hearing was entered on May 10, 1979. This court granted petitioners to, and including, October 7, 1979, within which to file their Petition for Writ of Certiorari (A-83). This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

1. Whether the California court complied with the guidelines of this Court set forth in *Jones v. Wolf*, 99 S.Ct. 3020 (1979), when it applied "neutral principles of law" in the case below.

2. Whether the Constitution of the United Presbyterian Church in the United States of America and the

Articles of Incorporation of respondent church establish that church property, title to which is held by respondent, is held for the benefit of or in trust for the denomination.

3. Whether the use of "neutral principles of law" to award the church property in this case to the breakaway faction results in a violation of the First Amendment.

4. Whether the holding of *Jones v. Wolf* allowing state courts to follow "neutral principles of law" without deference to the decisions of ecclesiastical tribunals should be re-examined in the context of this case which illustrates the impossibility of interpreting church rules of property ownership without deciding questions of doctrine and polity.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Amendment 1:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

U.S. Constitution, Amendment 14, Section 1:

> . . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The issue before the California courts was which of two conflicting claimants within a hierarchical church, the United Presbyterian Church of the United States of America (UPCUSA herein), was entitled to ownership and control of the real property of a local church.

The facts and posture of the instant case are similar to those in *Jones v. Wolf*, 99 S.Ct. 3020 (1979), but there

are critical differences which play an important part in the Court's consideration of this petition.

1. The UPCUSA is a unitary hierarchical church in which each congregation, presbytery and synod are integral parts ruled by a General Assembly[1] which makes decisions and legislates for the whole church. It is not a "generally hierarchical" church organization with which a local church may be "affiliated," as the Presbyterian Church in the United States was described in the majority of *Jones v. Wolf*, 99 S.Ct. at 3028. The two denominations were once united, but were separated during the Civil War when the Presbyterian Church in the Unites States, basically a Southern church, separated from UPCUSA.

2. The constitution of the UPCUSA, its Book of Order, provides in the Chapter on Church Government:

> The radical principles of Presbyterian Church government and discipline are: That the several different congregations of believers, taken collectively, constitute one Church of Christ, called emphatically the Church; that a larger part of the Church, or a representation of it, should govern a smaller, or determine matters of controversy which arise therein; that, in like manner, a representation of the whole should govern and determine in regard to every part, and to all the parts united: that is, that a majority shall govern; and consequently, that appeals may be carried from lower to higher judicatories, till they be finally decided by the collected wisdom and united voice of the whole Church. For these principles and this procedure, the example of the apostles and the practice of the primitive Church are considered as authority.[2]

[1]The congregation, the basic unit of the church, is governed by the session consisting of the minister and the ruling elders. Each session elects a representative to the presbytery and from the presbytery representatives are drawn for the Synod. The General Assembly consists of ministers and ruling elders elected by the presbytery.

3. In 1967, the Presbyterian minister of the Community Church of Palm Springs (Presbyterian), respondent herein, lodged a complaint with the Presbytery of Riverside (Presbytery). The complaint detailed alleged doctrinal changes made in 1967 by the General Assembly, and also alleged trends within the church, to which some members of the Community Church took exception. It asked permission to withdraw from the UPCUSA and take the church property; the Presbytery denied the requests.

4. Acknowledging the jurisdiction and control of the UPCUSA church judicatories over church membership and property, the majority or breakaway faction appealed the Presbytery's denial of its requests to the superior judicatories.

5. Ultimately the matter reached the General Assembly. The General Assembly referred the matter to its Permanent Judicial Commission, which issued its preliminary judgment sustaining the decision of the Presbytery.

[2]Book of Order, Section 35.01. The text of this section was adopted circa 1793 by the General Assembly of the Presbyterian Church. In this quotation the word "radical" is used in its primary meaning of "fundamental and basic," and the word "appeals" is used in a general sense rather than with reference to a case involved in judicial process.

6. On May 21, 1968, the preliminary judgment of the Permanent Judicial Commission was presented to the 180th General Assembly which adopted said preliminary judgment as its final judgment. The full text of the final judgment is attached hereto. See Appendix A-37—A-58.

7. On May 28, 1968, a majority of the members of the Community Church present at a meeting voted to withdraw from the United Presbyterian Church, and on June 8, 1968, they delivered a letter renouncing the Presbytery's jurisdiction over the Community Church. On that same day, the Presbytery voted to suspend the Community Church's Session effective June 30, and elected an Administrative Commission to take the Session's place as the proper governing authority over the local church and its property. This decision of the Presbytery was not challenged or appealed. Those in physical control of the Community Church removed the word "(PRESBYTERIAN)" from its name and refused to relinquish control of the church property to the Administrative Commission.

8. The Constitution of UPCUSA, the Book of Order, provides in the chapter on the Session (the governing judicatory of each particular church consisting of the pastor and the ruling elders):

> Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission composed of ministers and ruling elders, *with the full power of a session. This*

commission shall take the place of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct. Book of Order, Section 41.15 (emphasis added).

9. The chapter on the Session also provides:

> Subject to the provisions of the Directory for Worship, the session shall have and exercise exclusive authority over the worship of the congregation, including the musical service; and shall determine the times and places of preaching the Word and all other religious services. *It shall also have exclusive authority over the uses to which the church buildings and properties may be put,* but may temporarily delegate the determination of such uses, subject always to the superior authority and direction of the session. Book of Order, Section 41.07 (emphasis added).

10. The Minutes of the UPCUSA General Assembly, including the prior decisions of General Assembly and the church's long tradition, establish that its unitary hierarchical church structure and government are based upon its interpretation of sacred scripture and have always controlled property matters as well as matters of doctrine and polity.

11. The UPCUSA Book of Order provides in the chapter on Incorporation and Trustees:

> A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.

> A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church. Book of Order, Section 62.12.

12. The UPCUSA Book of Order also provides in the chapter on Incorporation and Trustees:

> Whenever hereafter a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used and applied for such uses, purposes, and trusts as the presbytery may direct, limit and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America. Book of Order, Section 62.11.

Following the events described in Paragraphs 3 through 7 above, petitioner, the Presbytery, instituted this litigation asserting that the Administrative Commission appointed by it pursuant to the Book of Order of the UPCUSA was entitled to possession and use of the church property. The Administrative Commission is also a party plaintiff.

On April 21, 1977, the Superior Court of Riverside County, California, entered its opinion in favor of the breakaway faction. The court noted that legal title to all property of the local church was vested in the local church corporation, a proposition petitioner never challenged. The court then apparently concluded that the various

judicatories of the UPCUSA were without authority to suspend the Session of the local church and place the Administrative Commission in control of the government, corporation and property of the local church.

The California Court of Appeal, in an opinion entered February 27, 1979, affirmed the trial court. The court held, however, that this dispute was "essentially a property dispute" that could be resolved on the basis of "neutral principles of law" and the "formal title" doctrine. Appendix A-15—A-16. It noted, but failed to discuss, the significance of the appointment pursuant to the Book of Order of the Administrative Commission by the Presbytery to take control of the government and property of the local church.

On May 10, 1979, the California Supreme Court denied petitioner's timely petition for hearing and this Petition for Writ of Certiorari followed.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION BELOW IS INCONSISTENT WITH 1ST AMENDMENT PRINCIPLES AS INTERPRETED BY THIS COURT IN *JONES V. WOLF.*

In *Jones v. Wolf*, 99 S.Ct. 3020 (1979), this court found that "the provisions of the constitution of the general church (Presbyterian Church in the United States), the Book of Church Order, concerning the ownership and control of property, failed to reveal any language of trust in favor of the general church." *Jones v.* Wolf, 99 S.Ct. at 3024.

In this case, the constitution of the United Presbyterian Church in the United States of America (UPCUSA), the Book of Order, establishes a structure of

unitary hierarchical church control which encompasses local church property and does contain provisions concerning the ownership and control of property which establish that all church property is held for the benefit of or in trust for the denomination. Furthermore, the Articles of Incorporation of the Community Church acknowledged the structure and control established by the Book of Order.

The Book of Order provides that the UPCUSA is a unitary church governed by ascending judicatories in which all matters of controversy are decided and controlled by the collected wisdom and united voice of the whole church.[3] The Book of Order applies these principles to property specifically. It directs that a corporation be formed by each particular church to receive, hold, encumber, manage and transfer property in every state which permits religious bodies to be incorporated.[4] It vests *control* of the sale, leasing and mortgaging of all church property in the presbytery.[5] The Book of Order also provides for the reversion of the property of a particular church to the presbytery upon the dissolution or extinction of the particular church or upon the abandonment of its work.[6]

[3]Book of Order, Section 35.01.

[4]Book of Order, Section 62.04, provides:

> Each particular church shall be incorporated, cause a corporation to be formed and maintained, or in states forbidding the incorporation of religious bodies elect from its members individual trustees: to receive, hold, encumber, manage and transfer property, and to facilitate the management of its civil affairs in such manner as may be directed by the session of the particular church from time to time and according to this Constitution.

[5]Book of Order, Section 62.12.

[6]Book of Order, Section 62.11.

In this case, the Community Church of Palm Springs (PRESBYTERIAN) became extinct by the "abandonment of its work" as a particular church in the UPCUSA, and the vote to leave the denomination provided "other cause" for finding that it was extinct. Upon the extinction of the particular church the property of the church reverted to the presbytery to be put to whatever use it chose.[7] In this case, the Presbytery of Riverside chose to elect an Administrative Commission and place it in charge of the property so that the loyal faction could continue to meet and worship there.

Interpretation of the Book of Order is a matter for the General Assembly of the UPCUSA. The Book of Order is the constitution of organic law of the church which defines and establishes church polity, discipline and administration. As such, it is a matter for church judicatories and not civil courts to interpret and apply. *Serbian Eastern Orthodox Diocese vs. Milivojevich*, 426 U.S. 696, 710, 721 (1976).

The California Court of Appeal at pages A-25-A-29 of its opinion purports to interpret the provisions of the Book of Order and reaches the conclusion, contrary to the conclusion of the General Assembly of the UPCUSA, that the Community Church of Palm Springs (PRESBYTERIAN), had not become extinct. In its analysis of the provisions of the Book of Order, the Court made particular reference to the phraseology regarding "abandonment" of the work of the church. The Court of Appeal held that the Community Church of Palm Springs had not in fact abandoned its work. Such a decision is an obvious invasion of a doctrinal area, resulting in the impermissible entanglement of the state

[7]See n.5.

in ecclesiastical matters, a result prohibited under the First Amendment. The nature of the work performed by churches and whether they are performing in accordance with the doctrine and polity of the denomination is a matter to be resolved by the ecclesiastical body.

This Court condemned the Illinois Supreme Court for passing on just such a dispute over church polity and church administration in *Serbian* in which it stated:

> the Illinois Supreme Court relied on purported "neutral principles" for resolving property disputes which would "not in any way entangle this court in the determination of theological or doctrinal matters." [Citations]. Nevertheless, the Supreme Court of Illinois substituted its interpretation of the Diocesan and Mother Church constitutions for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation. This the First and Fourteenth Amendments forbid. *Serbian* 426 U.S. at 721.

The property reversion provision of Section 62.11 is triggered by the extinction of the particular church as defined by the Book of Order and church law precedent. It is totally outside the purview of civil court powers to interpret church law on such matters of church polity and administration and purport to arrive at a different conclusion than the judicatories of the hierarchical church. *Wolf*, 99 S.Ct. at 3025; *Serbian*, 426 U.S. at 724-725; *Watson*, 80 U.S. (13 Wall.) at 727-729. This provision of the constitution of the denomination deals specifically with church property and specifies that in the instant case the use and control of that property is to be determined by the higher judicatories of the UPCUSA. As this Court stated in *Jones v. Wolf*, such a provision in the

denomination's constitution overcomes any presumption of local majority rule and must be given effect by civil courts. *Wolf*, 99 S.Ct. at 3025-3026, 3027.

A parallel line of UPCUSA church law authority for denominational control of the property of the Community Church is found in the provisions dealing with the powers of the Presbytery to suspend the session of a particular church and to appoint an Administrative Commission to assume control of the government, corporation and property of the local church. This includes the full power of the session, including authority over use of church property. Book of Order, Sections 41.15, 41.07.

Thus, the provisions of the Book of Order followed by the Presbytery in the instant case explicitly vest the control over the use of the property of Community Church in the Administrative Commission. The California courts ignored these provisions and thereby ran afoul of this Court's mandate in *Wolf*. When a religious organization specifies "what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy," *Wolf*, 99 S.Ct. at 3025-3026, it ensures that the dispute over the church property is resolved in accord with the constitution of the denomination and not be left to be resolved by "neutral principles of law."

Prior to its attempted withdrawal from the UPCUSA the Community Church's Articles of Incorporation clearly acknowledged that it was subject to the authority

of the judicatories of the denomination.[8] And further, the Articles of Incorporation included a provision that upon liquidation, dissolution or abandonment of the corporation all church property would "revert, transfer and inure to the benefit of" the UPCUSA.[9]

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[8] "Second: That the Community Church of Palm Springs (Presbyterian), Palm Springs, California, is an unincorporated association and a present existing church organized under and adhering to the doctrines and discipline of the Presbyterian Church in the United States of America . . ." (Through a name change, the word "United" was added to the denomination's name at a date after the Articles of Incorporation were prepared.)

* * * *

"Sixth: That this corporation shall be at all times subject and adhere to the doctrines and disciplines of the Presbyterian Church of the United States of America."

* * * *

"Eighth: That all members of the abovementioned unincorporated association shall be members of this corporation. That the admittance of any members, and the expulsion or suspension of members, shall be governed by the bylaws of the corporation and the doctrine and discipline of the Presbyterian Church of the United States of America." (Plaintiffs' Exhibit No, 8 in Evidence.)

[9] The Articles of Incorporation of the Community Church were amended on February 25, 1957, to add the following:

"Eleventh: That all property now owned or hereafter acquired by said corporation is and shall be irrevocably dedicated to religious and/or charitable purposes, and upon the liquidation, dissolution or abandonment of said corporation, all of such property subject only to prior transfer or encumbrance, in and about the carrying out of such purposes will revert, transfer and inure to the benefit of the Presbyterian Church in the United States of America, a corporation."

The breakaway faction of the Community Church acknowledged the jurisdiction of the hierarchical church judicatories over its doctrinal complaint and request to take the church property out of denominational control. The decisions of the church judicatories, up to and including the final decision of the General Assembly speaking as the voice of the unitary church, reaffirmed what has been the law of the church for centuries, i.e., that all church property is owned by or for the benefit of the UPCUSA. The General Assembly stated:

> "The United Presbyterian Church in the United States of America is one Church with synods, presbyteries, and congregations as parts thereof. We reaffirm the position that ownership of all property in The United Presbyterian Church in the United States of America is shared by all of its members, despite the multiplicity of corporations among its parts. App A-47.

In spite of the acknowledgement of the jurisdiction of church judicatories by the breakaway faction, in spite of the language of the Book of Order which establishes beyond a doubt that the property is held for the benefit of the denomination, in spite of the fact that the duly elected Administrative Commission has the exclusive authority under the Book of Order to control the use of the property, in spite of the decision and opinion of the General Assembly in this matter, prior decisions and resolutions of the General Assembly on the matter and in spite of a tradition relied upon at least since *Watson*, the California courts refused to find a trust in favor of the denomination and refused to acknowledge the authority of the church judicatories to determine who should have the use and control of the local church property.

Furthermore, in arriving at its decision the California Court of Appeal engages in an impermissible exploration and interpretation of the Book of Order and church law on matters involving church polity and administration and purports to overrule the church's judicatories on each issue. This clearly contravenes the ruling in *Watson, Serbian* and *Wolf* that civil courts are not permitted to examine and interpret church law on such matters.

Finally, the court below used the "formal title doctrine" to award title to the local church corporation without articulating which of two opposing factions within a local congregation is entitled to control the corporation. A local majority cannot control in this case, for the Constitution of the UPCUSA specifically provides in cases such as this that the majority that controls is that of the whole Church acting through its judicatories. The General Assembly has spoken for the whole Church in this case.

Consequently, this Court should grant the Petition for Writ of Certiorari to consider whether the Constitution of the UPCUSA and the Articles of Incorporation of the particular church establish that church property, title to which is held by the particular church, is held for the benefit of or in trust for the denomination. This case would provide an excellent opportunity for the court to further examine and define some of the terms and concepts set out in *Wolf*.

II

THE FACTS OF THIS CASE ILLUSTRATE HOW THE APPLICATION OF NEUTRAL PRINCIPLES OF LAW CAN RESULT IN VIOLATIONS OF THE 1ST AMENDMENT AND THIS COURT SHOULD RE-EXAMINE *JONES V. WOLF* IN THE LIGHT OF THESE FACTS.

In *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), this Court was confronted with the same issue that confronts it in this case. The same church is involved although it was then known as Presbyterian Church in the United States of America. In both cases a local congregation wished to leave the denomination and take the local church property with it.[10] As in this case, the dispute in *Watson* arose over questions of trends in church social positions. In *Watson* the issue was slavery. In this case, the issue was doctrinal changes promulgated by the General Assembly in 1967. The focus of the litigation in that case was also on which group of persons, the original session or the session as constituted after the intervention of a Synod Committee, should have control of the government and property of the local congregation. This Court held that:

> the rule of action which should govern the civil courts . . . is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these [hierarchical] church judicatories to which the matter has been carried, the legal

[10]Presbyterians were among those considered dissenters in Colonial days. They were among those who needed the assurance of the First Amendment. Moreover, the distinctive characteristics of the Presbyterian Church are governmental. Other denominations adhere to the same Reformed beliefs as the Presbyterians, but three governmental characteristics must be present for a church to be Presbyterian. The governmental characteristics of differentiation are: (1) the parity of the clergy; (2) substantive participating in church government by the laity; and (3) unity of government, i.e., the parts are integral and comprise the whole.

> tribunals must accept such decisions as final, and as binding on them . . . .
> . . .
> It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for. *Watson*, 80 U.S. (13 Wall) at 727.

In subsequent decisions this Court has made clear that the *Watson* principle of deference to decisions of hierarchical church courts is fully grounded in the First Amendment, *Presbyterian Church v. Hull Church*, 393 U.S. 440, 446-449 (1969); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952), and applies to issues of internal church government and policy, as well as to questions of faith or doctrine. *Serbian*, 426 U.S. at 721, 722; *Kedroff*, 344 U.S. at 116. See Also, *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960). Mr. Justice Frankfurter, in his concurring opinion in *Kedroff*, 344 U.S. at 121, characterized the nature of thesedisputes by stating that, "What is at stake here is the power to exercise religious authority."

A. This Case Illustrates the Impossibility of the Civil Courts Examining Church Rules of Property Ownership Without Deciding Questions of Church Polity.

In *Serbian*, this Court reemphasized the constitutional command that civil courts must defer to church court determinations in hierarchical churches. It reversed a state court judgment because,

> it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry *into church polity and resolutions based thereon of those disputes*. *Serbian*, 426 U.S. at 708 (emphasis added).

The final paragraph of the Court's opinion in *Serbian* summarizes the applicable constitutional rule:

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them. *Serbian*, 426 U.S. at 724-725.

The property question in this case arises in precisely the same manner that it arose in *Watson* and *Serbian*, i.e., concerning who is the proper authority to control the church government and consequently its property. Thus, the outcome of the property dispute is based upon the resolution of church polity questions.

The UPCUSA rules of property ownership cannot be applied without deciding such church polity questions as: (1) whether a local church has abandoned "its work;" (2) whether a local church has become "extinct;" (3) whether an Administrative Commission has been duly appointed to replace the local session; (4) what the powers of the Administrative Commission are; etc. The error of the California court in deciding such matters of church

polity is just as violative of the First Amendment as the error of the New York court in *Kreshik* and the error of the Illinois court in *Serbian*. In the instant case, the General Assembly of UPCUSA rendered a final judgment of who was entitled to control the local church government and consequently its property. In *Kreshik*, the Patriarch in Moscow rendered a judgment on the proper occupant of St. Nicholas Cathedral. In *Serbian*, the Council of Bishops rendered a judgment as to the proper ecclesiastical appointee with authority over property. Equal protection of the First Amendment should be accorded the UPCUSA.

B. The Use of the Neutral Principles of Law Approach will Result in the Destruction of the Form of Government Adopted by the UPCUSA.

In its opinion in *Wolf*, this Court held that the First Amendment does not require the states to adopt a rule of compulsory deference to decisions which have been rendered by church judicatories within a hierarchical church. In the place of compulsory deference this Court instructs the states to adopt "neutral principles of law" as a means of adjudicating church property disputes. The facts in this case illustrate the impossibility of applying this rule without violating the First Amendment.

The "neutral principles of law" approach, as announced in *Wolf*, will result in the destruction of the form of government adopted by UPCUSA. UPCUSA is more than a religious organization subscribing to a particular doctrine or creed; it is a form of religious government.[11] Although democratic in nature, its

[11]Book of Order, Section 35.01.

structure provides that the higher judicatories within the unitary, hierarchical church structure will govern and control the lesser judicatories. This concept has been incorporated in its constitution.[12] This form of democratic rule adopted by UPCUSA is similar to the government which has been adopted by the citizens of the United States wherein local governments defer to state and federal governments and lower courts follow the rulings of higher courts.

The church government adopted by UPCUSA has always included rules regarding the control of church property. Control of church property is provided for in the constitution[13] and in legislative pronouncements of the General Assembly of UPCUSA. The constitution of the church has been tested, molded and changed for hundreds of years through legislative pronouncements and decisions of the church tribunals. If this court strikes down a provision of the church's constitution, it strikes down the work product of hundreds of years of free exercise of religion. The provisions of the constitution pertaining to the ownership of property are fundamental precepts upon which the denomination was founded. If the civil courts place a different interpretation on the control of church property, this constitutes a significant infringement upon the free exercise of religion as practiced by UPCUSA and is violative of the First Amendment.

C. The Presumptive Majority Rule Approach of *Jones v. Wolf* Violates the Free Exercise of Religion of Hierarchical Churches in General and UPCUSA in Particular.

[12]*Id.*

[13]Book of Order, Sections 62.12, 62.04.

Since *Watson* this court has followed the practice of first examining the polity of the church within which the dispute arose. If the church was hierarchical in nature, the court deferred to decisions of church judicatories. If the church was congregational in nature, the will of the majority in the local congregation prevailed.[14] The decision in *Wolf* suggested that states apply majority rule first, which is "defeasible upon a showing that the identity of the local church is to be determined by some other means." *Wolf*, 99 S.Ct. at 3027. Thus, all churches are measured by a congregational yardstick.

The decision in *Wolf* could result in the state courts formulating a rule of presumptive majority control at the local congregational level. This would be contrary to the rule established by the constitution, precedent and practice of the UPCUSA. The unitary hierarchical church government in the UPCUSA, following the sacred scriptures and the practice of the primitive church,

[14]*See* Note, *Serbian Eastern Orthodox Diocese v. Milivojevich: The Continuing Crusade for Separation of Church and State*, 18 Wm. and Mary L. Rev. 655, 656 n.10 (1977):

> Hierarchical churches are those in which church authority reposes either in ascending levels of adjudicatory bodies (Presbyterian hierarchicals) or in sublime clergy, such as bishops and popes (Episcopal hierarchies). In contrast, the congregational churches are characterized by autonomous local congregations that govern themselves without control by a higher church body . . . Examples of hierarchical churches of the Presbyterian variety include the Presbyterian, Methodist and some Lutheran churches. The Episcopal type includes The Roman Catholic and Eastern Orthodox Churches. Congregational churches are exemplified by the following churches: Baptist, Disciples of Christ, Quakers and Churches of Christ.

has always provided for control over church property by the denomination acting as one body with a united voice. Any rule permitting a majority of the local congregation to prevail over the decision of the Church as a whole would violate both the Free Exercise and Establishment clauses of the First Amendment.

Although it predates *Wolf*, the decision of the California Court of Appeal in the instant case illustrates the deficiencies of the *Wolf* presumptive majority rule approach. The opinion of the Court of Appeal ignored the decision of the higher church judicatories within UPCUSA. It appears to have accepted the will of the majority of the local congregation while ignoring the will of the majority of the denomination as expressed through the General Assembly. It has imposed upon all members of UPCUSA, save for the members of the Community Church of Palm Springs who voted to withdraw, a form of government to which their consent was never given. The state has thus impermissibly announced and enforced a decision on church polity, which states that the local congregation, rather than the unitary national hierarchical church, is the voluntary association to which the members belong. This a state cannot do without violating the First Amendment.

D. The Use of the Neutral Principles of Law Approach Leaves States Free to Fashion Widely Varying Rules Governing Church Property Ownership Imposing an Intolerable Burden Upon National Hierarchical Churches.

Although the decision in *Wolf* adopts "neutral principles of law" as a means of adjudicating church property disputes, there is little or no insight given into the meaning of that term itself. Beyond very broad

suggestions to the states, no definition of "neutral principles of law" is given. Apparently, any purported "neutral principle of law" can be applied by a state, so long as it is not violative of the First Amendment. The decision appears to transfer to the states the power to decide church property questions with all attendant First Amendment issues, an area of the law uniquely within the jurisdiction of this Court.

To sanction the resolution of ecclesiastical disputes on a state-by-state basis would impose an intolerable burden upon a national hierarchical church. The approach suggested by the court in *Wolf* allows the various states to apply at random any purported neutral principle of law, based on the predilections of the judges within that particular jurisdiction. Such an approach will result in confusion, and ultimately render the survival of the national church impossible.[15]

In the final analysis, the approach suggested by this court in *Wolf* by judicial fiat creates a form of administrative law which must be adhered to by hierarchical churches. The decision apparently says that churches can exercise freedom of religion, so long as the freedom of religion does not touch on the issue of control of church property. Such an exception being carved from the protection of the First Amendment was certainly not a result anticipated by the Founding Fathers. The right to control of the real and personal property of the church is as much a part of the religion as the doctrine, creed and

[15]On December 31, 1978, the UPCUSA consisted of 2,520,368 members organized into 8,627 local churches. The very size of the UPCUSA, standing alone, demonstrates the significance and importance of this case, not to mention the impact which this decision will have on numerous other hierarchical churches.

form of government which the church and its members have chosen to adopt. Decisions relating to doctrine, creed and form of government are inextricably bound up with church property decisions.

CONCLUSION

For all the reasons set forth above, we respectfully urge the Court to grant a Writ of Certiorari, reverse the decision below and grant a hearing to reconsider the function of civil courts in property disputes in unitary hierarchical churches.

Respectfully submitted,

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Attorneys for Petitioners.

APPENDIX

ORDER DUE
May 25, 1979

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

4th District, Division 2, Civil No. 19079

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

PRESBYTERY OF RIVERSIDE ET AL

v.

COMMUNITY CHURCH OF PALM SPRINGS ET AL

SUPREME COURT
FILED
MAY 10 1979
G. E. BISHEL, Clerk
Deputy

Appellants' petition

for hearing DENIED.

Newman, J., is of the opinion that the petition should be granted.

Tobriner
Acting Chief Justice

I, G. E. BISHEL, Clerk of the Supreme Court of the **State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.**

Witness my hand and the seal of the Court this 25th **day of** June **A.D. 19**79

Clerk
By J. Kavanaugh
Deputy Clerk

APPENDIX

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH DISTRICT
SECOND DIVISION
STATE OF CALIFORNIA

COURT OF APPEAL-FOURTH DISTRICT
FILED
FEB. 27, 1979
ROBERT L. FORD, Clerk
..... Deputy Clerk

PRESBYTERY OF RIVERSIDE, et al.,	
Plaintiffs, Cross-Defendants and Appellants,	
v.	4 Civil 19079
COMMUNITY CHURCH OF PALM SPRINGS	(Super. Ct. Nos. 13680 & 12302
Defendant, Cross-Complainant and Respondent.	**OPINION**

Appeal from a judgment of the Superior Court of Riverside County. John H. Hews, Judge. Affirmed.

Thompson & Colegate, James D. Ward and Jim D. Bishop for Plaintiffs, Cross-Defendants and Appellants.

Schlecht & McCullough and John C. Shevlin for Defendant, Cross-Complainant and Respondent.

Community Church of Palm Springs (hereafter Community Church or local church) was for many years affiliated with United Presbyterian Church in the United States of America[1] (hereafter UPCUSA or general church). In 1968, after unsuccessfully attempting to negotiate a mutually agreeable termination of the relationship, Community Church unilaterally terminated its affiliation with UPCUSA. UPCUSA claims ownership and the right to possession of all of the real and personal property standing in the name of Community Church and possessed by it on the date it terminated its affiliation with UPCUSA. Eliminating procedural complexities of no significance to the appeal, plaintiffs, which are components of UPCUSA, instituted this action against Community Church for ejectment, recovery of property, quiet title and damages for the value of the use of the property at $4,000 per month since June 30, 1968. Community Church answered, denying plaintiffs' claims of ownership and right to possession and alleging several affirmative defenses. It also cross-complained against plaintiffs to quiet its title to the property in dispute. The trial court determined that Community Church is the owner of the property and rendered judgment quieting its title. Plaintiffs appeal.

Appellants contend that the highest judicatories of UPCUSA determined that the property in question belongs to the general church and that the courts of California are compelled by decisions of the United States Supreme Court, decisions of the California Supreme Court and the dictates of the First Amendment to the

[1] UPCUSA is the successor to the Presbyterian Church in the United States of America.

United States Constitution to accept and enforce the rulings of these ecclesiastical bodies; that as a matter of law a member church in a general church organization of hierarchical structure holds title to its property in trust for the general church organization; that, in any event, Community Church holds title to the property in question as trustee of an express trust or a trust implied in fact for the benefit of the general church; that the judgment rendered in the court below would deprive the general church of its property without due process of law; and that the trial court's conclusion that plaintiffs were estopped to assert that Community Church holds title to the disputed property in trust for the benefit of the general church is erroneous as a matter of law. For the reasons that follow we have concluded that all of these contentions save the last, which we do not reach, are without merit.

No contention is made that the trial court's findings of fact are not supported by substantial evidence, and most of the pertinent facts are included in the findings. UPCUSA is a voluntary religious association the components of which constitute one united church, connectional in nature. It is organized in a hierarchical structure of ascending representational levels of ecclesiastical authority called judicatories. That part of its constitution dealing with its system of government is designated "The Book of Order."

Each local church is governed by a body called the session. A session consists of the pastor and the ruling elders elected by the congregation. In turn, the local churches within specified geographical areas are organized into presbyteries. A presbytery consists of all the ministers in the geographical area and at least one ruling elder from each individual church. Each

presbytery supervises the churches within its area and has the authority to, among other things, organize and dissolve churches, remove pastors from their pulpits, and suspend the powers of a session. When the powers of a session have been suspended by a presbytery, the presbytery also has the authority to elect an administrative commission to assume control over the life of the church. Palm Springs is within the territorial jurisdiction of the Presbytery of Riverside.

The next higher judicatory in the system is the synod, which consists of a number of presbyteries, usually all of those in a state. The Synod of Southern California exercises ecclesiastical control over seven presbyteries in Southern California and the State of Hawaii, including the Riverside Presbytery.

Ultimate authority rests in the General Assembly, the commissioners of which are elected annually by the various presbyteries.

The Book of Order requires the formation of a corporation at each level of authority to hold, manage and transfer property and to facilitate the management of its civil affairs. Thus, as is typical, there is a corporation named the Presbytery of Riverside and, in addition, an unincorporated association known as the Presbytery of Riverside. Both are plaintiffs in this action and will hereafter be referred to collectively as Presbytery unless differentiation between the two is significant.

Defendant Community Church of Palm Springs is a nonprofit California corporation incorporated in 1948 by members of an unincorporated association which for a number of years prior to 1917 had maintained in Palm Springs the church known as the Community Church of Palm Springs. In 1917 the unincorporated association

became affiliated with the Presbyterian denomination and thereupon took the name Palm Springs Presbyterian Church. However, shortly thereafter the association discontinued use of the designation Presbyterian and was known simply as the Community Church of Palm Springs or, after incorporation, the Community Church of Palm Springs (Presbyterian). For many years Community Church was the only Protestant church in the community of Palm Springs.

From 1917 until 1967 the pastors of Community Church were placed in the pulpit by the judicatories of UPCUSA, and the pastors and session of Community Church regularly participated in the activities of Presbytery. Members of the session took an oath of office pledging adherence to the doctrine and discipline of the Presbyterian denomination.

Since its inception Community Church has invited to membership persons from all Protestant denominations without any requirement of termination of membership in any other church or denomination and has held itself out as being an interdenominational community church. Persons who joined or attended Community Church who were of Presbyterian background were frequently outnumbered by persons who were members of other denominations. Although for a period of approximately 10 years prior to 1966 each new member was given an application that included a statement that Community Church was affiliated with the Presbyterian denomination, many members were unaware of the affiliation of Community Church with the Presbyterian denomination. Although some of its publications indicated Community Church's Presbyterian affiliation, a substantial majority of such material described Community Church as an interdenomina-

general church, including an amicable resolution of any question as to ownership of property in the name and possession of Community Church. The General Council of the Presbytery of Riverside recommended that Community Church's request be denied "in order that the witness of the United Presbyterian Church in the U.S.A. might be maintained in Palm Springs." On September 23, 1967, Presbytery adopted the Council's recommendation.

Community Church appealed by filing a complaint against the Presbytery with the Synod of California. The complaint was referred to the new Synod of Southern California for adjudication. The Synod referred the complaint to its Judicial Commission. On March 4, 1968, the Judicial Commission sustained the action of the Presbytery.

Thereafter Community Church appealed by filing a complaint with the 180th General Assembly which referred the matter to its Permanent Judicial Commission. The Commission found that the complaint was a proper one for consideration by it but rendered a "preliminary judgment" that the complaint not be sustained. However, it expressly authorized Community Church to present to the 1969 General Assembly its request to withdraw with its property.

Pending presentation of the matter to the 1969 General Assembly, Presbytery attempted to take possession of the physical assets of Community Church, and in early 1968, the congregants of Community Church, by an overwhelming majority, voted to withdraw from the general church. On May 28, 1968, the session of Community Church adopted a resolution to withdraw from the Presbyterian denomination, and on June 8, the session sent a letter to Presbytery renouncing

tional and nondenominational church open to all Protestants.

With the exception of a small amount of money received from the Presbytery of Riverside early in Community Church's history, all funds used to purchase and improve properties of Community Church came from its members of nonmember individuals residing in or visiting the desert area of Riverside County, and not from or through the efforts of plaintiffs. Since 2928 and until recent years, Community Church raised money for its operating budget by soliciting donations from residents of the Palm Springs community of different religious faiths who were approached on the basis of helping to maintain a nondenominational community church. Community Church conducted two major capital fund raising drives during the periods 1957 through 1960 and 1961 through 1963 for the purpose of raising funds to construct major facilities. Those campaigns were conducted and those funds solicited on the representation that Community Church was an interdenominational and nondenominational community Protestant church. Many members, officers and trustees of Community Church would not have sought membership nor solicited funds for Community Church's operating budget or building fund drives had they known that UPCUSA and Presbytery claimed ownership of Community Church's properties.

In about 1967, disputes arose between Community Church and UPCUSA due to several doctrinal changes and a mandate for social action adopted by the General Assembly. As a result, Community Church petitioned the Presbytery of Riverside to appoint a commission to negotiate with Community Church a mutually agreeable termination of the local church's affiliation with the

Presbytery's jurisdiction over Community Church. In addition, a representative of the session was sent to the June 8 meeting of Presbytery to deliver a copy of the session's resolution to withdraw. At its June 8 meeting, Presbytery acted to suspend the powers of the Community Church session, effective June 30, 1968, elected persons to comprise an administrative commission and empowered the administrative commission to act as the session of the "Palm Springs Presbyterian Church." Although not originally named as such, the Administrative Commission of the Presbytery of Riverside was subsequently joined as a party plaintiff in this action.

On July 1, 1968, pursuant to a resolution of its board of trustees on June 18, Community Church amended its articles of incorporation to, among other changes, eliminate "(PRESBYTERIAN)" from its name.

In 1969, Community Church attempted to present to the 181st General Assembly its request to withdraw with its property. However, its request was never considered or decided on the merits because the Committee on Bills and Overtures determined that the "petition is filed by an independent body which has renounced the jurisdiction of the United Presbyterian Church in the United States of America," and was therefore "not filed by a proper petitioner and cannot be considered . . ."

Pervading almost all of appellants' contentions and central to the appeal are their arguments that the judicatories of UPCUSA have determined that the property in dispute is that of the general church and that the trial court was bound to accept the decision of the religious tribunals as binding and conclusive. Not so.

In the first place, there is a serious question whether the issue of ownership of the disputed property was ever

finally determined on its merits by the judicatories of UPCUSA. Community Church's appeal to the 180th General Assembly was found to be proper and the adverse decision of the Permanent Judicial Commission was expressly denominated only a "preliminary judgment." Permission was expressly granted Community Church to present the question to the 181st General Assembly in 1969, but when Community church attempted to do so, its request was rejected not on the merits but on the ground that it could not be considered because it was filed by an independent body which had renounced the jurisdiction of UPCUSA.

Secondly, and more fundamentally, appellants misapprehend the law. It is true "that, whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest . . . church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." *(Watson v. Jones,* 80 U.S. (13 Wall.) 679, 727 [20 L.Ed. 666, 676]; accord: *Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 710, 713, 714 [49 L.Ed.2d 151 162-163, 165, 96 S.Ct. 2372]; *Horsman v. Allen,* 129 Cal. 131, 138; see *Committee of Missions v. Pacific Synod,* 157 Cal. 105, 128; *Samoan Congregational etc. Church in U.S. v. Samoan Congregational etc. Church of Oceanside,* 66 Cal.App.3d 69, 75-76; *In re Metropolitan Baptist Church of Richmond, Inc.,* 48 Cal.App.3d 850, 858; cf. *Kreshik v. St. Nicholas Cathedral,* 363 U.S. 190 [4 L.Ed.2d 1140, 80 S.Ct. 1037]; *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94, 115 [97 L.Ed. 120, 136, 73 S.Ct. 143].) However, when the dispute to be resolved is essentially ownership or right to possession of property, the civil courts appropriately adjudicate the controversy

even though it may arise out of a dispute over doctrine or other ecclesiastical question, provided the court can resolve the property dispute without attempting to resolve the underlying ecclesiastical controversy. *(Eldership v Church of God at Sharpsburg,* 396 U.S. 367 [24 L.Ed.2d 582, 583, 90 S.Ct. 499]; *Presbyterian Church v. Hull Church, 393* U.S. 440, 449 [21 L.Ed.2d 658, 665, 89 S.Ct. 601]; *In re Metropolitan Baptist Church of Richmond, Inc., supra,* 48 Cal.App.3d at pp. 858-859; see *Serbian Orthodox Diocese v. Milivojevich, supra,* 426 U.S. at pp. 709-710 [49 L.Ed. 2d at p. 163, 96 S.Ct. 2372]; *Samoan Congregational etc. Church in U.S. v. Samoan Congregational etc. Church of Oceanside, supra,* 66 Cal.App.3d at pp. 75-77; cf. *Wheelock v. First Presb. Church,* 119 Cal. 477, 482.)

The rule was definitively stated in *Presbyterian Church v. Hull Church, supra:* "[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating

secular interests in matters of purely ecclesiastical concern. . . . [T]he [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." (393 U.S. at p. 449 [21 L.Ed.2d at p. 665]; accord: *Eldership v. Church of God at Sharpsburg, supra,* [both per curiam and concurring opns.]; *In re Metropolitan Baptist Church of Richmond, Inc., supra.)*

Contrary to appellants' argument, the more recent *Serbian Orthodox* decision is not to the contrary. The central issues in that case were the identity of the "true Diocesan Bishop" and the propriety of the reorganization by the general church of a single diocese into three dioceses. (426 U.S. at pp. 707-708 [49 L.Ed.2d at pp. 161-162].) The court expressly found that the identity of the true Bishop was essentially a religious question although it incidentally affected control of property. (426 U.S. at pp. 709, 717 [49 L.Ed.2d at pp. 162-163, 167].) It also expressly determined that the reorganization of the diocese involved a religious dispute, stating: "[It] involves a matter of internal church government, an issue at the core of ecclesiastical affairs. . . ." (426 U.S. at p. 721 [49 L.Ed.2d at p. 170].) Thus the court held the decisions of the ecclesiastical tribunals final and conclusive. However, the court expressly quoted with approval the above-quoted language from *Presbyterian Church v. Hull Church.* (426 U.S. at p. 709-710 [49 L.Ed.2d at p. 163].)

The seminal decision, *Watson v. Jones, supra,* 80 U.S. (13 Wall.) 679, a pre-*Erie R. Co. v. Tompkins*

diversity decision decided before the application of the First Amendment to the states (see *Presbyterian Church v. Hull Church, supra,* 393 U.S. at p. 445 [21 L.Ed.2d at p. 663]), must now be viewed in the perspective of the later decisions in *Presbyterian Church v. Hull Church, Eldership v. Church of God at Sharpsburg, and Serbian Orthodox Diocese v. Milivojevich.* (See *Samoan Congregational etc. Church in U.S. v. Samoan Congregational etc. Church of Oceanside, supra,* 66 Cal.App.3d at p. 74, et seq.) However, again contrary to appellants' arguments, the decision in *Watson v. Jones* even in its pristine state did not preclude civil courts from adjudicating church disputes that are essentially property disputes only incidentally involving or arising out of ecclesiastical disputes. In *Watson v. Jones* the court was asked to decree the termination of an implied trust because of alleged departures from doctrine by the general church. (See *Presbyterian Church v. Hull Church, supra,* 393 U.S. at p. 445 [21 L.Ed.2d at p. 663].) Thus the dispute involved in the case was purely ecclesiastical. The court would have been required to determine what the orthodox doctrine was, what changes in doctrine had been made, and whether such changes as were found constituted such substantial or fundamental departures from the orthodox doctrine as to constitute a violation of the trust. (See *Presbyterian Church v. Hull Church, supra,* 393 U.S. at pp. 449-450 [21 L.Ed.2d at p. 666].) Thus the court was called upon "to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role." *(Presbyterian Church v. Hull Church, supra.)* Therefore, although the court in *Watson v. Jones* purported to speak of "questions . . . concerning the rights to property held

by ecclesiastical bodies" and to divide them into three classes (80 U.S. at pp. 722-723 [20 L.Ed. at p. 674]), the case clearly involved an essentially ecclesiastical dispute.

We find nothing of significance indicating a contrary rule in *Committee of Missions v. Pacific Synod, supra,* 157 Cal. 105, *Horsman v. Allen, supra,* 129 Cal. 131, or *Wheelock v. First Presb. Church, supra,* 119 Cal. 477. The essential question in the *Pacific Synod* case was the validity of a merger between the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church. (157 Cal. at p. 110.) The court expressly stated: "The regularity and validity of the union of that church with another of the same faith and form of government was essentially a question of ecclesiastical law." (157 Cal. at p. 129.) Strangely, even though the court expressly approved the principle laid down in *Watson v. Jones* that civil courts are bound by decisions of ecclesiastical tribunals in ecclesiastical disputes (157 Cal. at p. 128), the court stated: "We have preferred to decide the case . . . without regard to the decisions of the general assembly . . . upon these questions. We have supposed that this would be more satisfactory to the parties concerned." (157 Cal. at pp. 127-128.) In any event the dispute was clearly ecclesiastical.

Although the immediate purpose of the action in *Horsman v. Allen* was to determine the respective rights of the parties to the use and control of two tracts of land, the determining question was which of two sets of trustees elected by two religious bodies, both claiming to represent the true Church of the United Brethren in Christ, represented the "true" church. As the court stated: "The sole question, therefore, is as to the identity of the church. If the radical is the true church, the plaintiffs are entitled to recover; otherwise not." (129 Cal. at p. 135.)

Thus the controlling question was clearly ecclesiastical.

In *Wheelock v. First Presb. Church* the congregation of the First Presbyterian Church of Los Angeles divided into two factions. One faction petitioned the governing presbytery to divide the church into two and to make an equitable division of a fund of money that had been accumulated to purchase a new church site. The presbytery and a commission appointed by it did so. The court upheld the action of the presbytery, indicating that the division of the church into two was an ecclesiastical matter. The court did not definitively determine the nature of the dispute insofar as apportionment of the accumulated fund was concerned. It stated: "It may be conceded, for the purposes of the case, that neither the Presbytery nor the commission appointed by it had the power to divide and apportion the money held by the church corporation; and that the disposition of those moneys were matters for civil courts, and that ecclesiastical decrees bearing upon such disposition are not binding upon judicial tribunals." (119 Cal. at p. 482.) The court then proceeded to apply general principles of trust law and concluded that the fund of money should be apportioned on the same basis as that suggested by the presbytery and its commission. (119 Cal. at pp. 483-484.) Thus the court in fact determined the apportionment question by the application of "neutral principles of law." (See fn. 2,*infra,* and preceding and following text.)

It is unquestionably true that the present dispute over the ownership and right to possession of the property held by Community Church arose out of an underlying controversy involving largely questions of religious doctrine. However, the dispute to be decided by the court in this case is essentially a property dispute; the only relationship between the religious controversy and

the dispute in the case at bench is that the latter arose out of the former; the property dispute may be resolved without the necessity of becoming involved with or attempting to resolve the underlying ecclesiastical controversy; and the trial court acted with propriety in determining the case on the basis of "neutral principles of law" and the "formal title" doctrine.[2]/ As observed by the court in *In re Metropolitan Baptist Church of Richmond, Inc., supra,* 48 Cal.App.3d at p. 859; " 'The relevant inquiry must be whether the court can resolve the property dispute on the basis of neutral principles of law which do not involve the resolution *by the court* of ecclesiastical issues . . . [A]s long as the court does not have to resolve the doctrinal propriety [of a church's action] in order to determine who has legal control of the property, there is no unconstitutional intervention by the state in Church affairs.' " (Orig. emphasis.)

Appellants' attempt to analogize the dispute in the case at bench to those confronting the courts in the *Serbian Orthodox, Horsman* and *Wheelock* cases and to characterize it as essentially ecclesiastical is unavailing. As already indicated, the controlling questions in those cases turned on disputes directly involving religious doctrine or church polity, organization or structure.

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[2]/ The expression "neutral principles of law" apparently originated in the decision in *Presbyterian Church v. Hull Church, supra,* 393 U.S. at p. 449 [21 L.Ed.2d at p. 665]. The expression "formal title' doctrine" was used in the celebrated concurring opinion of Mr. Justice Brennan in *Eldership v. Church of God at Sharpsburg, supra,* 396 U.S. at p. 370 [24 L.Ed2d at p. 585].) What is meant by these expressions is nothing more than those principles or rules of law "developed for use in all property disputes" whether or not the litigants are religious associations or corporations. (See *Presbyterian Church v. Hull Church, supra; In re Metropolitan Baptist Church of Richmond, Inc., supra,* 48 Cal.App.3d at pp. 858-859.)

Appellants' arguments are apparently based on the authority of the Presbytery to fill the pulpit of Community Church and to suspend the powers of its session, on Presbytery's determination that the Administrative Commission selected by it is the proper body to control the life of Community Church and on the conclusion that the question presented is whether plaintiff Administrative Commission or the corporate defendant constitutes the "true" governing body of a local church within UPCUSA. However, this reasoning disregards a number of essential facts. When Presbytery acted on June 8, 1968, to suspend the powers of the Community Church session effective June 30, 1968, Community Church had already terminated its relationship with UPCUSA and withdrawn from the Presbyterian denomination. It is undisputed that a local church within UPCUSA may withdraw and terminate its affiliation. The only dispute here concerns ownership and right to possession of property in the name and possession of the local church when that right is exercised. There is no question in this case as to which body is the true Presbyterian Church in Palm Springs. Community Church has renounced its affiliation with the Presbyterian denomination and does not claim to be a Presbyterian church or the representative of UPCUSA in Palm Springs. Community Church freely acknowledges that Presbytery and the Administrative Commission control the life of the Presbyterian church in Palm Springs. In truth, there is no existing religious or ecclesiastical controversy. There was one, it is true, which gave rise to the present dispute over the property in the name and possession of Community Church, but in resolving the property dispute it is not required that the court involve itself in or attempt to resolve the underlying religious controversy. Community Church ended that

controversy when it withdrew from UPCUSA and terminated its relationship with the Presbyterian denomination.

In their opening brief appellants make an argument designated III in which they appear to contend that, apart from the cited cases, a judgment confirming title of the disputed property in Community Church would violate the dictates of the First Amendment by interfering with the free exercise of religion as practiced by UPCUSA, its constituent organizations and their members, and would constitute an establishment of religion by preferring one religion, that espoused by Community Church, to another, that espoused by the adherents of UPCUSA. Of course, the courts of California, in ascertaining the parameters of state action permissible under the First Amendment applicable to the states through the Fourteenth, are bound by the authoritative interpretations of the First Amendment enunciated by the United States Supreme Court. As discussed earlier, the decisions of the United States Supreme Court have expressly indicated that the mandates of the First Amendment are not violated by civil court resolution of property disputes involving religious organizations so long as that resolution does not depend on the court's attempting to resolve ecclesiastical controversies. Moreover, appellants' arguments overlook a fundamental fact. Any judgment the court below might have rendered would have had some effect upon the free exercise of religion and could be interpreted to prefer one religion over another. Impressing a trust upon the property in the name and possession of Community Church in favor of plaintiffs would no less have interfered with the right of the Community Church congregation freely to exercise religion as plaintiffs claim the present

judgment interferes with the right of UPCUSA's membership freely to exercise religion. A judgment in favor of plaintiffs in the court below would no less have preferred the religion of their congregants over that of the congregants of Community Church than the present judgment prefers the religion of the congregants of Community Church over that of plaintiffs. (See *Maryland and Virginia Eldership v. Church of God* (Md. 1969) 254 A.2d 162, 170 [decision following remand from the U.S. Sup. Ct.]; app. dismissed for want of a substantial federal question in *Eldership v. Church of God at Sharpsburg, supra,* 396 U.S. 367 [24 L.Ed.2d 582, 90 S. Ct. 499].)

We turn to appellants' contention that as a matter of law the property of a local church which is part of a general church having a hierarchical structure is held in trust for the general church. There is no question but that the properties of a religious, nonprofit corporation are held upon a trust. (*Lynch v. Spilman,* 67 Cal.2d 251, 260; *Committee of Missions v. Pacific Synod, supra,* 157 Cal. at p. 127; *Wheelock v. First Presb. Church, supra,* 119 Cal. at pp. 483-484; *Samoan Congregational etc. Church in U.S. v. Samoan Congregational etc. Church of Oceanside, supra,* 66 Cal.App.3d at pp. 73-74; see *Horsman v. Allen, supra,* 129 Cal. at p. 136.) The present dispute concerns the uses for which the property is held, and the identity of the beneficiaries of the trust—the congregants of the local church, or the general church and/or, perhaps, its congregants.

For support of their contention that the general church and, perhaps, its congregants are as a matter of law the beneficiaries of the trust, appellants rely on language found in *Wheelock v. First Presb. Church, supra,* 119 Cal. at p. 483, and *Watson v. Jones, supra,* 80

U.S. at p. 720 [20 L.Ed. at p. 673]. Analysis of the context in which the courts used the language relied on by appellants demonstrates that the language does not support appellants' contention and in fact supports the position of Community Church.

In *Wheelock*, quoting from *Winebrenner v. Colder*, 43 Pa. 244, 249, the court said in part: " 'Whatever property stands in its name is seised to the use of the church proper. It is a trustee holding property for the use and enjoyment of the church, and every member of the church is beneficiary of that trust.' " (119 Cal. at p. 483.) Appellants take the word "church" in the quoted language to refer to the general church as opposed to the local church. In this they are mistaken. The court in using this language was not discussing any problem involving the relationship between the general church and the local church; it was discussing the relationship between the local church's ecclesiastical body (i.e., the session) and the local church corporation or board of trustees in whom is vested title to the local church's property. (See 119 Cal. at pp. 482-483.) Thus it is clear that the word "church" and the words "member of the church" refer to the local church and a member thereof. In essence what the court was saying was that the directors or trustees of the corporation hold title to the property of the church in trust for the local church and every member thereof. Any doubt about the matter is resolved by the language of the next paragraph referring to the Central Presbyterian Church, one of the two churches into which the First Presbyterian Church of Los Angeles had been divided by the Presbytery. The court stated: *"Its members* were beneficiaries of the trust before the Presbytery divided the church and in justice and equity must stand in the same position after division." (119 Cal. at p. 483;

emphasis added.) Continuing, the court said: "The Presbytery had power to divide the old church into two other and new churches. It is [sic] exercised that power. Such exercise simply *made two church beneficiaries instead of one."* (119 Cal. at pp. 483-484; emphasis added.) The two churches referred to were the two local churches into which the First Presbyterian Church of Los Angeles had been divided by the Presbytery. Thus, properly read, *Wheelock* stands for the proposition that the property of a local church, even one that is part of a general church organization of hierarchical structure, is held in trust by the religious nonprofit corporation for the benefit of the local church congregation.

While some of its language is ambiguous, the decision in *Committee of Missions v. Pacific Synod, supra,* 157 Cal. at pp. 126-127, appears to be to the same effect. The trial court found "that the property consists of houses of worship held by the plaintiff corporation for the members of the local churches, respectively, which occupy and use the same." (157 Cal. at p. 127.) The Supreme Court apparently agreed, for it affirmed the judgment of the trial court and, in addition, earlier in the opinion stated: "It [the plaintiff corporation formed by Pacific Synod] has acquired and now holds various parcels of real property *in trust for the use of local congregations within the synod. . . ."* (157 Cal. at p. 110; emphasis added.) Further, in its reasoning the court relied upon the fact that "[e]ach particular church . . . established by the Cumberland Church, retains its individual and separate integrity and existence and *its property rights,* after the union fully as before. . . ." (157 Cal. at p. 125; emphasis added.)

Some language used by the court in *Horsman v. Allen, supra,* 129 Cal. at p. 136, indicates a similar

conclusion by that court. Speaking of the tripartite classification made by the court in *Watson v. Jones*, the court said: "The first is where property, by the express terms of the grant, 'is devoted to the teaching, support, or spread of some specific form of religious doctrine or belief'; the second, where it is held by or in trust for an independent congregation; and the third, *where it is held by or in trust for a congregation or other association subordinate to some general church organization.*" (Emphasis added.)

The language from *Watson v. Jones* relied on by appellants is the court's statement: "The trustees obviously hold possession for the use of the persons who by the constitution, usages and laws of the Presbyterian body, are entitled to that use." (80 U.S. at p. 720 [20 L.Ed. at p. 673].) The language states a truism, but it leaves unanswered the vital question of the identity of the persons entitled to use of the property by the constitution, usages and laws of the Presbyterian body. We observe at once that the statement does not support appellants' contention that the determination to be made is one of law. The court's reference to usages of the Presbyterian body suggests the question might well be one of fact. (Cf. *Rosicrucian Fellow v. Rosicrucian Etc. Ch.*, 39 Cal.2d 121, 133-135, 138.) Moreover, the language of the court immediately preceding and following the quoted statement clearly indicates that the word "trustees" in the quoted statement refers to the trustees of a local church and that the "persons" the court had in mind were the congregants of the local church. The significant language preceding the quoted statement is: ". . . [B]y the acknowledged rules of the Presbyterian Church, the trustees were the mere nominal title holders and custodians of the church property, and other trustees

were, or could be elected *by the congregation*, to supply their places once in every two years. 2. That in the use of the property for all religious services or ecclesiastical purposes, the trustees were under the control of the church *session*. 3.That by the constitution of all Presbyterian churches, the *session*, which is the *governing body in each*, is composed of the ruling elders and pastor. . . ." (80 U.S. at p. 720 [20 L.Ed. at p. 673]; emphasis added.) Immediately following the statement relied on by appellants appears the following: "They are liable to removal by *the congregation for whom they hold this trust*, and others may be substituted in their places. They have no personal ownership or right beyond this, and are subject in their official relations to the property, to the control of the *session* of the Church." (80 U.S. at pp. 720-721 [20 L.Ed. at p. 673]; emphasis added.) The words "congregation" and "session" unmistakably indicate the reference is to the local church and the local church congregation.

Moreover, the effect of *Watson v. Jones* was the rejection or repudiation of the very doctrine that appellants appear to invoke—the implied trust doctrine holding that church property was the subject of an implied trust in favor of those who adhered to the faith of the founders of the church. (See *Watson v. Jones, supra*, 80 U.S. at pp. 727-729 [20 L.Ed. at pp. 676-677]; *Judicial Intervention in Church Property Disputes—Some Constitutional Considerations*, 74 Yale L. J. 1113, 1114, et seq.) A concomitant of this implied trust doctrine was the necessity for the court to examine in great detail questions of religious doctrine in its determination as to which group of claimed beneficiaries continued to adhere to the "true" faith and which had departed from the "true" doctrine. (See *Presbyterian Church v. Hull Church*,

supra, 393 U.S. at pp. 449-450 [21 L.Ed.2d at p. 666]; *Maryland and Virginia Eldership v. Church of God, supra*, 254 A.2d at p. 165; *Presbyterian Ch. in U.S. v. Eastern Heights Pres. Ch.* (Ga. 1969) 167 S.E.2d 658, 659 [decision on remand from the U.S.Sup.Ct. in *Presbyterian Church v. Hull Church, supra*, 393 U.S. 440 [21 L.Ed.2d 658, 89 S.Ct. 606].) That is precisely what *Watson v. Jones* held a civil court is not permitted to do. (80 U.S. at pp. 733-734 [20 L.Ed. at p. 678]; see *Presbyterian Church v. Hull Church, supra; Maryland and Virginia Eldership v. Church of God, supra; Presbyterian Ch. in U.S. v. Eastern Heights Pres. Ch., supra.)* If the implied trust doctrine was ever the law in this state (cf. *Baker v. Ducker*, 79 Cal. 365, 373-374), it appears to have been repudiated in *Rosicrucian Fellow v. Rosicrucian Etc. Ch., supra*, 39 Cal.2d at pp. 133-134, where, in rejecting an argument based on adherence to the "original structure," the court stated: "The basis question in a controversy such as this should be the ownership of civil and property rights as shown by the conduct and acts of the parties. A classification based on a formula is not of much assistance. . . ."

Thus we find no support for appellants' contention in the decisional language relied on by them. On the contrary, the applicable decisions establish that the property of a religious nonprofit corporation is held upon a trust " 'to carry out the objects for which the organization was created.' " (*Lynch v. Spilman, supra*, 67 Cal.2d at p. 260; *Samoan Congregational etc. Church in U.S. v. Samoan Congregational etc.Church of Oceanside, supra*, 66 Cal.App.3d at p. 74; cf. *Wheelock v. First Presb. Church, supra*, 119 Cal. at pp. 483-484; *Baker v. Ducker, supra*, 79 Cal. at pp. 373-374.) Although the original articles of incorporation of Community Church recited

that it was a "church organized under and adhering to the doctrines and discipline of the Presbyterian Church in the United States of America" and provided that the corporation "shall be at all times subject and adhere to the doctrines and discipline of the Presbyterian Church in the United States of America," its stated purpose was "the establishment and maintenance of a place or places for worship and instruction, and for the dissemination and spreading of the *Christian Doctrine* among the people of the world. . . ." (Emphasis added.)

Except for one argument separately set forth, the contentions of appellants which we interpret as claiming that the evidence establishes an express or implied-in-fact trust are so admixed with their contentions based on the First Amendment and the *Serbian Orthodox* and *Watson v. Jones* decisions that it is difficult to organize them for meaningful discussion. We address those of significance that we can isolate.

The separately stated argument is as follows: "The session of the Palm Springs church [Community Church] voted to withdraw from the UPCUSA, and the session ceased to function as a judicatory of the UPCUSA at that time. This constituted an abandonment of the work of the UPCUSA in Palm Springs, and the members of the church at Palm Springs were dispersed, and therefore the church property is subject to such disposition as may be directed by the Presbytery of Riverside." To support these conclusions, appellants rely on a paragraph from The Book of Order which provides: "Whenever hereafter *a particular church* is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of *its* members, the abandonment of *its* work, or other cause, such property as it may have, both real and personal, shall be held, used, and applied for such uses, purposes, and

trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America." (Emphasis added.)

These contentions of appellants are ill-founded. The quoted provision plainly provides that the property of a local church shall be held upon such trusts as the presbytery may direct when the local church (session) has been formally dissolved by the presbytery or when the local church has become extinct because of the dispersal of its members or the abandonment of its work. "[I]ts work" refers to the work of the local church, not the work of UPCUSA. As previously pointed out, the articles of incorporation of Community Church have provided since it was first incorporated that its purpose is the establishment of one or more places of worship and the dissemination of the Christian doctrine. Community Church still maintains a place of worship and is still engaged in the dissemination of Christian doctrine notwithstanding its withdrawal from the Presbyterian denomination. Its work has not been abandoned, and its members have not been dispersed.

In respect to what we have characterized as the implied-in-fact trust contention, appellants' principle argument is that UPCUSA has long adhered "to the principle that title to all property of the local church is held in trust for the benefit of the whole denomination," and that when Community Church affiliated with UPCUSA in 1917, it and its members agreed to be bound by the system of government and the laws and practices of UPCUSA. (See, e.g., *Watson v. Jones, supra,* 80 U.S. at pp. 726-727 [20 L.Ed. at p. 676]; *Committee of Missions v. Pacific Synod, supra,* 157 Cal. at p. 122.) Thus it is

asserted that by implied agreement Community Church holds title and possession of its property subject to a trust for the benefit of the general church.

However, normally, the question whether parties in their dealings have created a trust is one of fact to be determined largely by ascertaining the intent of the parties (*Petherbridge v. Prudential Sav. & Loan Assn.,* 79 Cal.App.3d 509, 561—517; *Abrams v. Crocker-Citizens Nat. Bank,* 41 Cal. App.3d 55, 59-61; cf. *Rosicrucian Fellow v. Rosicrucian Etc. Ch., supra,* 39 Cal.2d at pp. 133-138) measured by an objective standard (See *Petherbridge v. Prudential Sav. & Loan Assn., supra,* 79 Cal.App.3d at p. 516, fn. 2; *McGhee v. Bank of America,* 60 Cal.App.3d 442, 448; Rest.2d Trusts, § 23, com. *a,* p. 66). Where, as here, the trial court's determination of fact is based on conflicting evidence, or at least evidence giving rise to conflicting inferences, the substantial evidence rule applies, and the trial court's determination will not be disturbed on appeal. (*Estate of Bristol,* 23 Cal.2d 221, 223; *Petherbridge v. Prudential Sav. & Loan Assn., supra,* 79 Cal.App.3d at p. 517.)

It is undisputed, of course, that Community Church has title to and possession of all the property in dispute, both real and personal. Community Church first acquired real property in 1918, at which time the grantors gave the property to named grantees in trust for a component of UPCUSA. In 1929 the property was re-deeded to the corporate Presbytery upon condition that should the land and buildings be used other than for religious purposes or should Presbytery "or other Protestant denomination" fail to "support and maintain the said church and the work therein, to a reasonable extent, the property . . . conveyed . . . and the title thereto" would revert to the grantor. In 1935 the

original church property was sold and the proceeds of sale were used to acquire the land now owned and to build structures and add improvements. Provisions within The Book of Order require that in states where the incorporation of religious organizations is permitted, the property of the local church is to be held for the church by such corporation. In 1935 Community Church was not yet incorporated, and title to the newly acquired property was conveyed directly to the corporate Presbytery. After Community Church had been incorporated, at the request of Community Church, Presbytery conveyed the real property to Community Church in fee simple absolute with no restrictions, conditions or reservations relating to any trust. Previously, as required by Presbytery, Community Church's articles of incorporation were amended to add a provision that "upon the liquidation, dissolution or abandonment of said corporation," all property of the corporation would "revert, transfer and inure to the benefit of" UPCUSA.

Provisions in The Book of Order require that a local church must obtain permission from its presbytery before selling, leasing, mortgaging or otherwise encumbering any of its real property. However, unlike some other religious denominations having a hierarchical structure, there is no requirement by UPCUSA that title to local church property be vested in the general church. On the contrary, it is specifically provided that title to and administration of local church properties be vested in the local church trustees or corporation.

While there was evidence that some judicatories of UPCUSA asserted the principle that local church property is held in trust for the general church, there is not now, nor has there ever been a provision in The Book of Order so declaring, and in 1930 when the General

Assembly considered a proposal for the amendment of UPCUSA'S constitution to require that articles of incorporation of a local church declare that its property is held in trust for the general church, the proposal was not adopted.

Manifestly, the foregoing evidence gives rise to conflicting inferences. Even those provisions in The Book of Order that at first blush might be taken to support appellants' position (presbytery's permission required to sell, lease or encumber local church property; property to insure to the benefit of UPCUSA in the event of abandonment or dissolution of the local church) give rise to conflicting inferences, for if the property of a local church were in fact held in trust for the general church, those provisions would appear to be unnecessary. In any event, the controlling findings of the court with respect to the establishment of an implied-in-fact trust,which are not challenged on appeal, are that Community Church had no notice or knowledge that Presbytery or the general church claimed any implied trust interest in the local church properties; that at no time prior to the dispute between Community Church and UPCUSA and its components was any communication ever directed to representatives of Community Church giving notice that the general church claimed ownership of or a trust interest in Community Church properties; and that at no time did Community Church or its representatives make a commitment or agreement in writing or otherwise that title to its properties would be held in trust for the Presbyterian denomination or any division thereof. These findings are determinative of the issue.

Finally, we come to appellants' contention that the judgment quieting title to the disputed property in Community Church deprives the general church of its

property without due process of law. This contention is devoid of merit. The parties to this action, like countless others, are involved in a dispute over title to and the right to possession of specific real and personal property. Authoritative decisions of the United States Supreme Court and the appellate courts of the State of California authorize the trial court to determine the dispute by the application of "neutral principles of law" and the "formal title doctrine" (see fn. 2, and accompanying text, *ante*), that is, by the rules and principles of law applied to all parties to civil litigation involving such a dispute. Utilizing "neutral principles," the court has resolved the dispute adversely to plaintiffs, and, in a sense, plaintiffs have been "deprived" of property claimed by them. However, the "deprivation" of property plaintiffs have suffered is no different than that of any other unsuccessful litigant involved in such a dispute, and that "deprivation" is not without due process of law but on the contrary, is the result of due process of law.

The judgment is affirmed.
CERTIFIED FOR PUBLICATION.

KAUFMAN

J.

We concur:

TAMURA

Acting P.J.

McDANIEL

J.

I, ROBERT L. FORD, Clerk of the Court of Appeal, Fourth Appellate District, State of California, do hereby Certify that the preceding and annexed is a true and correct copy of OPINION as shown by the records of my office.
WITNESS my hand and the Seal of the Court this 5th day of July A.D. 1979.
ROBERT L. FORD, Clerk
By D M Johnson Deputy Clerk

Attorney for Defendants and Cross-Complainant

FILED
RIVERSIDE COUNTY
APR 21, 1977
DONALD D. SULLIVAN, Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE

PRESBYTERY OF RIVERSIDE ET AL.,
Plaintiffs,
vs.
JAMES H. BLACKSTONE, ET AL.,
Defendants.

NO. INDIO 13680 (MASTER FILE)

NO. INDIO 12302

COMMUNITY CHURCH OF PALM SPRINGS,
Cross-Complainant,
vs.
PRESBYTERY OF RIVERSIDE,
Cross-Defendants.

JUDGMENT AFTER TRIAL BY COURT

ADMINISTRATIVE COMMISSION OF THE COMMUNITY CHURCH OF PALM SPRINGS,
Plaintiffs,
vs.
JAMES H. BLACKSTONE, JR., ET AL.
Defendants

The above actions consolidated for trial came on regularly for trial on January 22, 1976 in Department 8 of the above entitled court sitting in Riverside, California, the Honorable JOHN H. HEWS, Judge Presiding, without a jury. The trial continued in session through Thursday, January 29, 1976. Plaintiffs and Cross-Defendants appeared by JAMES D. WARD of the firm of THOMPSON & COLEGATE; Defendants and Cross-Complainants appeared by JAMES M. SCHLECHT of the firm of SCHLECHT & McCULLOUGH.

A jury trial having been waived, the court having heard the testimony and considered the evidence, and the court having already filed its Findings of Fact and Conclusions of Law, the court hereby orders the following judgment:

1.) Defendant and Cross-Complainant COMMUNITY CHURCH OF PALM SPRINGS, A California Non-Profit Corporation, was at the time of commencement of the above entitled actions, and now is, the vested legal owner in fee simple absolute of all real and personal property described in Exhibit "A" attached hereto and incorporated herein by reference, including any monies, securities, bequests and gifts of property which may be in the possession or which have been made to said COMMUNITY CHURCH OF PALM SPRINGS since this litigation commenced.

2.) It is further adjudged that the PRESBYTERY OF RIVERSIDE, a Non-Profit Corporation, PRESBYTERRY OF RIVERSIDE, an Unincorporated Religious Association, and the ADMINISTRATIVE COMMISSION OF THE COMMUNITY CHURCH OF PALM SPRINGS (PRESBYTERIAN) have no right, title, estate, lien, claim to or interest in, of any nature, in

any of the properties referred to in Exhibit "A", or any part thereof.

3.) It is further adjudged that COMMUNITY CHURCH OF PALM SPRINGS, A California Non-Profit Corporation, and all of its assets are properly under the control of its membership acting by and through its duly elected Board of Trustees.

4.) It is further ordered that Defendant and Cross-Complainant COMMUNITY CHURCH OF PALM SPRINGS recover its costs from the PRESBYTERY OF RIVERSIDE in the amount of $ $121.50 .

Dated: April 21, 1977.

_____

JUDGE OF THE SUPERIOR COURT

JUDGMENT ENTERED ON _____,

1977, IN JUDGMENT BOOK _____,

VOLUME _____, PAGE _____.

DONALD D. SULLIVAN, CLERK

By _____

Entered on date filed
Judgment Book 246 Page 017

A. REAL PROPERTY

PARCEL 1:

Lots 16, 17, 18 and 19 in Block 16 of Palm Springs, as shown by Map on file in Book 9, page 432 of Maps in the office of the County Recorder, San Diego County; together with the Easterly 8 feet of Orange Avenue, as shown on said Map, adjacent to Lots 18 and 19 thereof, as vacated by Board of Supervisors of Riverside County, California, by Order recorded March 27, 1926 in Book 665, page 532 of Deeds.

PARCEL 2:

Lot 9 in Block 7 and the Southerly rectangular 25 feet of Lot 8 in Block 7 of Palm Springs, as shown by Map on file in Book 9, page 432 of Maps, Records of San Diego County, California.

PARCEL 3:

The North 50 feet of Lots 13, 14, and 15 and all of Lots 16, 17, 18, 19, 20 and 21, Block 7, Palm Springs as per Map recorded in Book 9, page 432 of Maps, Records of San Diego County, California.

PARCEL 4:

PARCEL A:

The South 35 feet of Lot Seven (7) and the North 25 feet of Lot Eight (8), in Block Seven (7) of Palm Springs, San Diego County Records, as per Map recorded in Book 9, page 432 of Maps, in the office of the County Recorder of San Diego County, California.

PARCEL B:

The Westerly eight feet of Orange Street as vacated by

Order of the Board of Supervisors of Riverside County recorded March 27, 1926 in Book 665, page 532 of Deeds lying South of the Easterly prolongation of the North line of the South 35 feet of Lot 7 and North of the Easterly prolongation of the South line of the North 25 feet of Lot 8.

PARCEL 5:

PARCEL A:

Lot 6 and the Northerly 15 feet of Lot 7 in Block 7 of Palm Springs, as shown by Map on file in Book 9, page 432 of Maps, Records of San Diego County, California.

PARCEL B:

The Westerly 8 feet of Orange Street, as vacated by Order of the Board of Supervisors of Riverside County recorded March 27, 1926 in Book 665, page 532 of Deeds, Records of Riverside County, California, lying South of the Easterly prolonggation of the Northerly line of Lot 6 in Block 7 of Palm Springs, as shown by Map on file in Book 9, page 432 of Maps, Records of San Diego County, California; and lying North of the Easterly prolongation of the Southerly line of the Northerly 15 feet of Lot 7 in Block 7 of said Palm Springs.

PARCEL 6:

Lots 10, 11 and 12 in Block 7 in Palm Springs, as shown by map on file in Book 9, page 432 of maps in Records of San Diego County, California.

PARCEL 7:

The South 100 feet of Lots 13, 14 and 15, Block 7, Palm Springs, as per map recorded in Book 9, Page

432 of Maps, Records of San Diego County, California.

B. PERSONAL PROPERTY

All furniture, furnishings, books of worship, hymnals, account books, bank accounts, money and other personal property of every kind, nature and description located upon, or within the improvements located upon the real property described above whether such personal property was in or upon said real property on May 28, 1968 or has been added to, acquired or created subsequent to such date including all money, securities, bequests, gifts or accounts deposited with any and all financial institutions vested in or under the control of the COMMUNITY CHURCH and whether in being on May 28, 1968 or on the date of entry of judgment herein.

EACH DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS CERTIFIED TO BE A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

Dated: July 27, 1979

DONALD M. SULLIVAN, COUNTY CLERK
Clerk of the Superior Court
Clerk of the Board of Supervisors
County of Riverside, California

By _____, Deputy

MINUTES
OF THE
GENERAL ASSEMBLY
OF
THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA

PART I
Journal
One Hundred and Eightieth General Assembly
Minneapolis, Minnesota
May 16-22, 1968

SEVENTH SERIES
VOLUME II
1968

Part I Journal
Part II Annual Reports
Part III Statistics

OFFICE OF THE GENERAL ASSEMBLY
Witherspoon Building,
Philadelphia, Pennsylvania 19107
August, 1968

The preliminary judgment of the Permanent Judicial Commission in Administrative Case No. 2, entitled James H. Blackstone, Jr., Complainant, vs. The Synod of Southern California, Respondent, was read by Donald S. Fuerth, Esquire, and was made the final judgment of the General Assembly. Commissioners from the Synod of Southern California did not participate in the voting. The final judgment is as follows:

James H. Blackstone, Jr. Complainant, vs. THE SYNOD OF SOUTHERN CALIFORNIA, Respondent.	ADMINISTRATIVE CASE NO. 2

The Rev. James H. Blackstone, Jr., Pastor of the Community Church of Palm Springs (Presbyterian), of Palm Springs, California, hereinafter referred to as "Palm Springs Church," has complained against the action of the Synod of Southern California, hereinafter referred to as "Synod," in sustaining the Presbytery of Riverside, hereinafter referred to as "Presbytery," denying the request of Palm Springs Church to negotiate for withdrawal from The United Presbyterian Church in the United States of America and for leave to retain its local church property.

Timely notice of complaint to the General Assembly was given to Synod and the complaint was properly filed with the General Assembly. It is the finding of the Permanent Judicial Commission of the General Assembly that the matter is properly before it as an administrative case (Book of Discipline, Chapter XII. Section 9 and Section 10), that Complainant has a standing to complain (Book of Discipline, Chapter XII. Section 8), and that since a question of the interpretation of the Constitution is involved, it is a proper case for consideration by the Permanent Judicial Commission of the General Assembly (Form of Government, Chapter XIV, Section 9).

The essential facts are as follows:

On January 11, 1967, the congregation of Palm Springs Church adopted a resolution asserting its objection to the proposed Confession of 1967, and resolving to retain the Westminster Confession of Faith, including the retention of subscription questions then in use rather than the new questions to be presented to the General Assembly in May, 1967. Complainant mailed a letter to members of Palm Springs Church advising them

of a meeting of the congregation to be held on June 25, 1967, for the purpose of considering the recommendations of a special committee that had been appointed in April to study the future course of Palm Springs Church. Attached to the letter was a "Report on the Issues that Face Our Church" prepared by Complainant. This report discussed the background of Palm Springs Church, pointing out that in 1917 the small group of original members elected to become a congregation under the Constitution of the Presbyterian Church in the United States of America, that for many years it was the only Protestant Church in the community, and that the ministry had not been so denominationally oriented that it would exclude the fellowship of people of other denominations. The report stated that there had been a growing divergence for many years within the Presbyterian denomination reflecting basic differences in theology between conservatives and liberals and that the "Confession of 1967" was an effort to call a divided church to unity in its mission. He referred to the Confession as a successful compromise on the part of the liberals, but said that it was disappointing to others in the church in that it failed to maintain the historic position of the denomination. The report described three issues which Complainant considered vital:

"First, the lack of a true Confessional standard for our Church as the system of doctrine which we believe to be taught in the Scriptures; second, the changed attitude toward the Holy Scriptures in the Ordination Vows as the official view of the denomination; and third, the mandate for social action, which the liberals believe to be the import of 'The Confession of 1967'."

He also referred to certain trends which he considered apparent in the action of the General

Assembly and with which he took issue, namely, the increased social action replacing the strong program of evangelism, the trend toward ecumenism and the confusion in the Church's Christian Education program.

At the meeting of the congregation on June 25th the following recommendation made by the special committee was submitted to the congregation for a vote:

"We recommend that our church reaffirm its doctrinal position contained in the resolution adopted unanimously by our congregation at the annual meeting 11 January, 1967, and that this commitee be authorized to negotiate with the Presbytery of Riverside to explore the means of working out an amicable arrangement, by which our church can withdraw from the United Presbyterian Church and operate independently as The Community Church of Palm Springs, keeping our church property and enabling us to seek fellowship or association with churches of like doctrinal standards."

According to a letter by Complainant addressed to the congregation of Palm Springs Church dated June 28, 1967, the vote of the congregation approving the recommendation was 212 to 3. (The total membership of this church reported as of December 31, 1967, was 999.) At the argument before this Commission both sides informed the Permanent Judicial Commission that, at a later date, the vote in favor of withdrawal was 296 to 42.

Complainant notified the Stated Clerk of Presbytery of the congregational action and asked if the General Council or a committee of Presbytery would meet with Palm Springs Church committee to start conversations. On July 7th a meeting of the General Council was called for the purpose of considering the proposal from Palm Springs Church. The meeting ran for approximately five

hours, two hours of which were devoted to presentations by Palm Springs Church committee members and discussions by members of the General Council with those committee members. At the close of the meeting the General Council voted to recommend to Presbytery "that the request submitted by the Palm Springs Community Presbyterian Church be denied, in order that the witness of The United Presbyterian Church in the United States of America might be maintained in the city of Palm Springs." Two days later the General Council met with the Session of Palm Springs Church to discuss the issues and the recommendation the General Council proposed to make to Presbytery.

Subsequently, on September 6, at its regular meeting, the General Council requested the Stated Clerk to prepare a documented statement in support of, and giving reasons for, the Council's recommendation.

On September 23, Presbytery received the General Council's recommendations and the prepared statement supporting the recommendations entitled "It Is Not Negotiable." This statement discussed the authority of the Constitution and the unity of the Church, the changes in the Constitution, effected through action of the General Assembly in 1967, reviewed the attempts of other churches to withdraw and retain property, referred to precedents in Civil Courts, and concluded:

"In view of all the above, including (1) insufficiency of doctrinal change as grounds on which the request rests, (2) the lack of any inherent right of a congregation to withdraw and retain its property, (3) civil and ecclesiastical precedent in cases that have been heard and settled, (4) Presbytery's lack of authoritative jurisdiction, your Stated Clerk believes that the recommendation of

General Council is correct, and that the request from Palm Springs is not negotiable."

The Stated Clerk moved the adoption of the Council's recommendation and the motion was seconded. Complainant moved a substitute motion that the request of Palm Springs Church be approved as originally presented. The substitute motion was defeated 64 to 5. The original motion adopting Council's recommendation was then approved by a vote of 65 to 3.

Complainant thereupon complained to Synod setting forth the following reasons in support of such complaint:

I.

"The Riverside Presbytery denied the request of the Palm Springs Community Church to negotiate for withdrawal upon the mistaken assumption that it did not have jurisdiction to hear the request, and that the request was 'not negotiable.'

II.

"The Presbytery of Riverside failed to consider the distinctive and unique character of the Palm Springs Community Church.

III.

"The adoption of the Confession of 1967, the removal of the Westminster Confession of Faith and the Catechisms from their position as the doctrinal symbols of the denomination and the placing of that confession in a book of historic confessions of various centuries, and the revision of two ordination vows by the General Assembly of The United Presbyterian Church in the United States of America constitute a breach of the trust relationship by which the Community Church of Palm Springs holds title to its property."

The Judicial Commission for Synod heard the matter and rendered judgment that the action of Presbytery be sustained and the request of Palm Springs Church be not granted. Referring to the three reasons of complaint, that Commission stated:

"It is the judgment of the Judicial Commission that Reason No. 1, of the Complaint is not sustained because the Presbytery of Riverside did receive and deny the request of the Palm Springs Community Church to withdraw from The United Presbyterian Church in the United States of America and to retain its prperty.

"Reason No. 2, of the Complaint is not sustained because the Presbytery of Riverside did consider the distinctive and unique character of the Palm Springs Community Church when it denied the request 'that the witness of The United Presbyterian Church in the United States of America might be maintained in Palm Springs.'

"Reason No. 3, of the Complaint is not sustained since changes in the doctrinal symbols of the church do not affect the relationship of a particular church in the Presbyterian system. 'A particular church consists of a number of professing Christians, with their children, voluntarily associated together for divine worship and godly living, agreeably to the Holy Scriptures, and submitting to a certain form of government.' (Form of Government, Chapter IV, Section 1. Also see chapter IV, Section 2(2))."

In the complaint to General Assembly, the Complainant asserts that Synod did not consider Reason No. 2 raised before Synod. This assertion is inaccurate and we concur in Synod's judgment in this respect. Complainant's reason for complaint to General Assembly may be summarized as follows:

(1) Synod found that Presbytery had decided the case on its merits, whereas, the records of the decision of Presbytery show clearly that the decision was influenced by the assumption that it did not have jurisdiction and that the matter of such withdrawal was "not negotiable," and (2) Synod gave no consideration to the basic question which has brought the congregation of Palm Springs Church to its announced position to withdraw from the denomination; namely, that whether or not the General Assembly agrees with the views of the congregation of Palm Springs Church, the important fact is that the congregation believes that the changes in the Constitution brought about by the action of the General Assembly in 1967, constitute a radical departure from the basic principles of the Constitution of The United Presbyterian Church in the United States of America.

Reason No. 1 is not sustained. We are satisfied that Presbytery did consider the request of Palm Springs Church on its merits. The record clearly shows that the views of Complainant and members of his church were before Presbytery when official action was taken on both the substitute and original motions. Two hours were devoted by General Council to hearing the presentation and discussion of the matter by Complainant and members of the Palm Springs Church. Another two hours were spent by General Council in discussion with the Session ten weeks before the meeting of Presbytery.

Prior to the meeting of Presbytery, Complainant sent a circular letter to the ministers and elders of Presbytery enclosing a memorandum which set forth at length a number of factors which he felt should be taken into consideration in passing on the merits of the case. On the floor of Presbytery, Dr. Blackstone spoke at length in

support of his substitute motion, referred to the circular letter and attempted to answer arguments presented in favor of adopting the General Council's recommendation.

Complainant maintains that the decision was influenced by the assumption that Presbytery did not have jurisdiction to consider the request on its merits because of the document submitted by the Stated Clerk to support the General Council's recommendation. The language quoted in the Complaint reads: "It is your Stated Clerk's opinion that Presbytery does not have jurisdiction over the question presented by the church in Palm Springs. That jurisdiction remains with General Assembly." This, taken out of context, could lead one to the conclusion that Presbytery had decided the case on jurisdictional ground rather than on its merits. A complete reading of the document, however, leaves no doubt that the merits of the request were very much in question. It should be noted that immediately after this sentence the following appears:

"In view of precedent already established, it would appear that withdrawal and retention of property is not a right, but a privilege rarely granted, one that General Assembly would not even consider except on appeal, *without a strong recommendation from Presbytery that would be supported on persuasive grounds.*

"It is your Stated Clerk's further opinion *that the grounds of doctrine change as proposed by the church in Palm Springs are not sufficient,* in view of the provisions for change clearly set forth in the Constitution and the fact that General Assembly approved the change." (Italics supplied)

There is nothing in the Stated Clerk's statement which would indicate that Presbytery lacked the

authority to *recommend* approval of Palm Springs' request to General Assembly if it reached the decision that the request was a meritorious one. Presbytery did not have final authority to approve the Palm Springs Church's request to withdraw from the denomination and take the church property with it. As stated in the *Minutes* of the General Assembly, 1964, on page 271, in answer to eight separate Overtures on the subject:

"The United Presbyterian Church in the United States of America is one Church with synods, presbyteries, and congregations as parts thereof. We reaffirm the position that ownership of all property in The United Presbyterian Church in the United States of America is shared by all of its members, despite the multiplicity of corporations among its parts. Title cannot be transferred without adequate financial compensation except by action of the General Assembly as the judicatory which represents the whole Church."

Complainant recognized this limitation of Presbytery's authority in his memorandum to the members of the Presbytery when he stated:

"According to the interpretation given by the Stated Clerk of the General Assembly regarding churches in our position at the present time, we believe that the Presbytery has the right and the responsibility to consider all the factors of the local situation of the individual church in forming its judgment, and if there is found sufficient reason, then to recommend to the General Assembly approval of the request. In our case, we feel that there are a number of factors that should be considered."

It is our opinion that Presbytery did consider the factors enumerated by Complainant as well as the fact that this was the only United Presbyterian Church in the United States of America in Palm Springs which had

given witness of the denomination for the past 50 years and reached the conclusion that on the merits the request of Palm Springs Church should be denied "in order that the witness of The United Presbyterian Church in the United States of America might be maintained in Palm Springs."

Complainant's second basic contention is that, regardless of how General Assembly views the matter, the belief of the members of the Palm Springs congregation that the constitutional changes in 1967 radically departed from the basic principles of the Constitution of The United Presbyterian Church in the United States of America is itself a sufficient basis for withdrawal of Palm Springs Church with its property. The argument is, in substance, (1) that Palm Springs Church congregation had no direct vote in the decision to make these changes, (2) that such changes were never contemplated "by those who made these provisions for amending the Constitution," and (3) that such changes constitute a breach of the trust relationship between the local church as holder of the title to the property and The United Presbyterian Church in the United States of America as beneficiary of the trust.

The argument misconceives both the constitutional structure of the Church and the nature of the trust relationship between a particular church and the denomination.

The constitutional provisions for the government of the denomination and of any particular church, as well as the provisions for future amendment of its governmental structure and its doctrinal statements, are accepted by a local church when it decides to become a part of the denomination (as Palm Springs Church did in 1917). It has been settled, by decisions of the civil courts, as well as

by frequent actions of the General Assembly, that a particular church holds legal title to its property as trustee for the benefit of the entire denomination. *Watson v. Jones*, 80 U.S. 679 (1871); see also *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960); and *Digest*, p. A948 ff.

"Therefore, when the property held by the church is that purchased or conveyed for the general use of the religious congregation, not devoted forever, by the instrument which conveyed it, nor by any specific declaration of its owner, to the support of any special religious doctrines, or any peculiar form of worship, it is and remains the property of the general church which exercises such general and ultimate power of control. It does not belong to the particular congregation which uses it, much less to the individual members of such a congregation. It does not belong to the presbytery or the synod, nor, in a strict sense, to the General Assembly. It belongs to the Church, which is composed of its entire membership; . . . and the Church as a whole, acting through its supreme governing bodies, exercises the ultimate rights of ownership and control over all its properties." *Digest*, p. A949, 1937, p. 67 (quoted from *Barkley v. Hayes*, 208 Fed. 319 (1913), affirmed on appeal under the case names of *Duvall v. Synod of Kansas*, 222 Fed. 669 (C.A.8, 1915), and *Shepard v. Barkley*, 247 U.S. 1 (1918).

One of the obligations of this trust relationship is that the trustee (namely, the local church) must use the property for the benefit of the denomination—that is, to serve the interests of the denomination by enhancing the witness *of the denomination* in that particular locality. The local church, as trustee, has no authority to act

contrary to the purposes of the denomination as determined by the denomination as a whole. Presbyteries are given the authority and responsibility to supervise particular congregations to this end by such action as may be appropriate. (Form of Government, Chapter XII, Section 7.)

Furthermore, it is neither legally nor factually accurate to assume (as Complainant apparently does) that the property in question was given by people who intended to limit the use of their property forever to any particular theological emphasis. The property held by Palm Springs Church, like that of most congregations, represents the accumulated stewardship over the years of countless individuals who worshipped there for a time, whether former residents, current residents, or transients. They did not condition their gifts on any specific uses; they simply gave to the Church as part of The United Presbyterian Church in the United States of America. The present congregation holds no proxy from former members and past donors; nor, under Presbyterian government, can any individual be considered to have a severable equity in any property of the church. Rather, it all belongs to the total church.

Just as no individual member who decides to withdraw is entitled to take a part of the church property with him, so also the congregation as a whole must respect the fact that the property belongs to and is held for the use of the whole denomination.

Complainant does not deny that the proper procedures for amending the Constitution were followed in the changes made in 1967. The reference to the lack of a direct vote by the members of the congregation is cited. not as an irregularity, but in explanation of their frustration. Presumably, they would feel the same way if

the identical Constitutional changes had been made by direct vote of all church members rather than by vote of their representatives in the Presbyteries and the General Assembly. Such frustration is inevitable in all organizations because, whatever the decision-making process, there is almost always a minority which preferred something more or less or different.

The complaint really goes to the *content* of the changes, particularly as they relate to the total confessional statement of the church. But the Constitution of the Church does not contain (nor did it in 1917, or at any other time) any limitation on the content of amendments. That is left to the particular General Assembly which recommends an amendment, to the Presbyteries (two-thirds of which must approve), and to the succeeding General Assembly which must thereafter enact the amendment before it can become effective. Since every church is represented in the presbyteries, and the commissioners to each General Assembly are all selected each year by the Presbyteries they represent, the decisions reflect mature deliberations by representatives chosen in a democratic manner which assures expression to all voices in the Church.

The argument of complainant that there is some inherent, unwritten, limitation on the content of amendments is analogous to that rejected by the United States Supreme Court in *State of Rhode Island v. Palmer*, 253 U.S. 350, 386 (1920). It was contended there that such an inherent limitation invalidated the 18th Amendment. The Court brushed it aside with the succinct statement that "The prohibition of the manufacture, sale, transportation, importation and exportation of intoxicating liquors for beverage purposes, as embodied in the Eighteenth Amendment, is within the power to amend reserved by Article 5 of the Constitution."

Similarly, in *Hawke v. Smith*, 253 U.S. 221, 226 (1920), after pointing out that by adopting the Constitution the states had surrendered to the general government powers specifically conferred on Congress, the Supreme Court said: "The framers of the Constitution realized that it might in the progress of time and the development of new conditions require changes, and they intended to provide an orderly manner in which these could be accomplished; to that end they adopted the fifth article."

In the government of the United Presbyterian Church, no less than in the government of the United States, the limitations on change relate to the procedural rules for amendment, not to the subject matter.

Accordingly, the second reason for complaint is not sustained.

As previously stated, the property of a local church is held in trust for the entire denomination and may be withdrawn only with the consent of the denomination, acting through its General Assembly. Whether the General Assembly would give such consent in a particular case without the affirmative recommendation of the Presbytery would be up to the General Assembly. The present complaint involves only the judicial question of whether the local judicatories acted properly within their respective areas of jurisdiction. It does not involve the question of whether the General Assembly, in the exercise of its ultimate authority, should or should not permit Palm Springs Church to withdraw. If Palm Springs Church wants to submit that question to General Assembly, it may properly do so by a petition, addressed to that end in accordance with the rules of General Assembly. While matters of broad concern should come before the General Assembly from presbyteries and

synods, there is ample precedent for specific proposals to be presented by petition of individuals or particular churches. See *Petition of members of First United Presbyterian Church of Indianapolis*, 1941, p. 354, U. *Digest*, p. A552.

"The right of petition is inviolable in the Church as in the State, and whenever private interests are involved, a memorial sent to this body [General Assembly] ought to be received." *Digest*, p. A550, 1928, p. 152; see also *Digest*, p. A548-9, 1928, p. 79.

Accordingly, this decision does not preclude a petition addressed to General Assembly requesting permission for the Palm Springs Church to withdraw, should the congregation choose to follow that course.

It is the preliminary judgment of the Permanent Judicial Commission of the General Assembly that the complaint before the General Assembly against the Synod of Southern California be not sustained.